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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,997	12/29/2003	Charles E. Narad	42P8220C12	8230

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

HARRELL, ROBERT B

ART UNIT PAPER NUMBER

2142

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/748,997

Applicant(s)

NARAD ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/29/2003 et al.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031229</u> . | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

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1. Claims 2-18 and 1-64 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. All United States Patent Applications mentioned in this application's textual portions of the specification must be updated with their current status (i.e., pending, abandoned, now United States Patent <number here>).
4. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims. Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 2-18, in the set of claims 2-18, and 1-64, in the set of claims 1-64, are rejected under 35 U.S.C. 101 because the applicant has two sets of claims to different inventions. Specifically, 35 U.S.C. 101 recites "a patent" for "an invention" each in the singular. For this rejection, and those to follow, the applicant is invited to view <http://portal.uspto.gov/external/portal/pair> and enter the Application Number of this application and then click submit. On the new page, click the "Image File Wrapper" tab. As indicated on this new page, there are two sets of claims dated December 29, 2003, one set of claims in 12 pages and another set of claims in 4 pages. One set (claims 2-18) is from a preliminary amendment canceling only original claim 1 while the other set (claims 1-64) were the originally filed claims on pages 207-217 of the specification textual portion of this application. Thus which set of claims is currently presented for examination is uncertain. Examiner treats both in the spirit of compact prosecution. Thus the applicant has failed to claim an invention. A restriction in this application would not be proper because there is unity of invention within each set, the claims cannot be properly grouped because of redundant claim numbering (i.e., there are two claims 2-18); and, most importantly, there appears to be a significant error (i.e., failure to cancel the original claims 2-64 adding new claims starting with a numbering of 65 et seq.) in this application requiring the applicant more time than the standard one month period to respond.

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7. Also, a rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added in the singular). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

8. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 1-64, in the set of claims 1-64, of this application are rejected based on double patenting of the "same invention" of claims 1-64 of United States Patent Application 10/748,311 which also has a set of 64 claims identical to those of claims 1-64 of this application. That is, the claims which are being rejected in this application are claims 1-64 starting with claim 1 having "A method of checking cumulative status of a plurality of arithmetic operations" to claim 64 being that which is dependent on claim 63 and ends in the word "tasks" against the like set of claims 1-64 in 10/748,997.

10. Claims 1-64 (the set with checking cumulative status) of this application are rejected based on double patenting of the "same invention" of claims 1-64 of United States Patent 6,701,338.

11. The following is a quotation of the second paragraph of 35 U.S.C 112:

***The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.***

12. Claims 2-18, in the set of claims 2-18, and claims 1-64, in the set of claims 1-64, are all rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention for the same reasons provided above with respect to 35 U.S.C. 101. The applicant should also keep in mind the claims must have clear antecedent bases. Any other term(s) or phrase(s) overlooked by examiner and not listed which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s) results in failing to clearly claim the invention. Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent bases are lacking can be viewed as non-responsive.

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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*A person shall be entitled to a patent unless –*

*(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

14. Claims 2-18, in the set of claims 2-18, are rejected under 35 U.S.C. 102(e) as being anticipated by Engel et al. (6,115,393).

15. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology by anticipated access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

16. Per claims 2 and 11, Engel taught, a method thus anticipating *a computer program product, disposed on a computer readable medium, the method* and thus the *product included instructions for causing a processor to access Transmission Control Protocol (TCP) segments (e.g., see col. 2 (lines 42-62)) of a bidirectional TCP connection between a first TCP end-point operating at a first network device (i.e., Monitor 10 on a network 8 in figure 1) and a second TCP end-point operating at a second network device (e.g. Monitor 10 on another network 8 in figure 1 in TCP communication with the first Monitor) (e.g., see Abstract, figure 2, figure 4, col. 4 (lines 44-45), col. 8 (lines 5-18), and col. 9 (lines 25-50)), determine a first TCP state machine state of the first TCP end-point based on at least some of the accessed TCP segments (e.g., see figure 8, col. 4 (lines 52-53) col. 11 (lines 38-62), col. 21 (line 31-et seq.)), determine a second TCP state machine state of the second TCP end-point based on at least some of the accessed TCP segments (e.g., see figure 8, col. 4 (lines 52-53) col. 11 (lines 38-62), col. 21 (line 31-et seq.)), reassemble data from accessed TCP segments sent from the first TCP end-point to the second TCP end-point based on sequence numbers (e.g., see figure 3, col. 2 (lines 55-62), col. 8 (line 60-et seq.), col. 11 (lines 38-52), and col. 33 (line 35)) of the TCP segments, at least some of the TCP segments being received out of order, reassemble data from accessed TCP segments sent from the second TCP end-point to the first TCP end-point based on sequence numbers of the TCP segments, at least some of the TCP segments being received out of order (e.g., see figure 3, col. 2 (lines 55-62), col. 8 (line 60-et seq.), col. 11 (lines 38-52), and col. 33 (line 35)). The applicant is reminded the functionality of TCP/IP packet sequence number; the reasoning for such numbering is that packets do not arrive in the same order, or over the same communication paths, to the destination as sent because of inherent, and thus anticipated, delays*

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in the networking system due to different routes and transmission errors. Such would cause the data bits to arrive out of order and thus reassembled in a jumbled fashion. Hence, the sequence number. Such delays will cause a later sent packet, with a higher sequence number, to arrive sooner than an earlier packet based on different routes of travel (i.e., TCP/IP is a packet switched protocol not all packets traverse the same wire(s)). A red car leaves Washington D.C. prior to a blue car, each destined for Los Angeles. The later leaving blue car arrives first in LOS Angeles because the blue car used highways and ate at fast food establishments while the red car used congested back country roads, clogged by horse and buggies, with slow restaurants and several flat tires (errors) due to poor road conditions (pot holes). If each contained half of a message, the message would make no sense if the red car's top half was glued below the blue car's lower half. While error correction in this example would be simplistic, such would not hold if the message was torn into a million small sheets sent by a million cars over various travel routes, even some by air flight. Romans were among the first to send fragmented messages; and, of course, there was the invention of page numbers, paragraph numbering, and even claim numbering. Furthermore, TCP/IP is a state driven protocol adapted by/to/for state machines per col. 21 (line 35). Thus using sequence number in TCP state machines was well known as indicated by Engel.

17. Per claims 3, 4 and 10, col. 21 (line 31-et seq.).

15. Per claims 5 and 6, see col. 11 (line 63-et seq. "object classes").

16. Per claims 7, see col. 13 (line 38).

17. Per claims 8 and 9, see figure 3 (SRC PORT with ACK and SEQ NO. (used for determining order of packets by their numerical value)).

18. Per claims 11-18, these claims are method mirrored claims of the product claims 2-10 and are thus rejected for the same reasons given above.

19. Claims 1-64, in the set of claims 1-64, are allowable over the art of record since the art of record failed to teach or remotely suggest the claimed subject matter and because they define the same identical invention in a valid United States Patent. The applicant is strongly advised to review the whole of this application for total compliance to 35 U.S.C. and 37 C.F.R. by proofing this application in the whole including, but not limited to, ***check for antecedent bases of "the" and "said" within the claims.*** It is suggested that the applicant start anew by canceling all claims and submitting new claims starting with a numbering from 65-et seq. and to check those for antecedent based issues as well.

20. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The

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examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (571) 272-3896. The fax phone number for all papers is (703) 872-9306.

23. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

A handwritten signature in black ink, appearing to read "R. Harrell", is positioned above the printed name.

ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142